

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF BRONX

=====X

ILEEN LABOY,

Index #23242/06

Plaintiff,

-against-

**VERIFIED ANSWER**

PATHMARK STORES, INC.,

Defendant.

=====X

Defendant, PATHMARK STORES, INC., by its attorneys, KRAL, CLERKIN, REDMOND, RYAN, PERRY & GIRVAN, LLP answering the Complaint of the plaintiff, sets forth upon information and belief the following:

1. Defendant denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs "FIRST" of the Verified Complaint.

2. Defendant denies each and every allegation contained in paragraphs "SECOND", "FOURTH", "FIFTH", "SEVENTH", "EIGHTH", "NINTH", "TENTH", "FOURTEENTH", "FIFTEENTH", "SIXTEENTH", "SEVENTEENTH" and "EIGHTEENTH" of the Verified Complaint.

3. Defendant denies each and every allegation contained in paragraph "TWELFTH" of the Verified Complaint except admits that PATHMARK STORES, INC. operated the premises located at 961 East 174<sup>th</sup> Street, Bronx, New York.

4. Defendant denies each and every allegation contained in paragraph "THIRTEENTH" of the Verified Complaint in the form alleged and respectfully refers all questions of law to the determination of the Court.

**AS AND FOR A FIRST AFFIRMATIVE DEFENSE**

5. Upon information and belief, the injuries sustained by plaintiff and any alleged damages were caused in whole or in part, or were contributed to by reason of the negligence, want of care, carelessness, assumption or risk, or other culpable conduct on the part of the plaintiff and by reason of the foregoing, the damages allegedly attributable or otherwise recoverable herein should be reduced proportionately.

**AS AND FOR A SECOND AFFIRMATIVE DEFENSE**

6. That the plaintiff could, with due diligence, have obtained personal jurisdiction over tortfeasors not a party to this lawsuit. Therefore, the culpability of these missing or absent tortfeasors may be computed into the apportionment of total culpability causing the subject occurrence.

**AS AND FOR A THIRD AFFIRMATIVE DEFENSE**

7. This answering defendant's equitable share of the total liability assigned to all persons liable, if any, if fifty percent (50%) or less.

**WHEREFORE**, the defendant PATHMARK STORES, INC. demands judgment dismissing plaintiff's Verified Complaint together with the costs and disbursements of this action.

Dated: Mineola, New York  
December 22, 2006

Yours, etc.,

KRAL, CLERKIN, REDMOND, RYAN,  
PERRY & GIRVAN, LLP

Attorneys for Defendant

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BY: 

HENRY M. PRIMAVERA

TO: LEVINE & GROSSMAN  
Attorneys for Plaintiff  
114 Old Country Road  
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**ATTORNEY'S AFFIRMATION**

STATE OF NEW YORK)

ss:

COUNTY OF NASSAU )

I, the undersigned, an attorney duly admitted to practice in the Courts of the State of New York, state:

That I am a member of the firm of KRAL, CLERKIN, REDMOND, RYAN, PERRY & GIRVAN, the attorneys of record for the defendant PATHMARK STORES, INC. in the within action;

I have read the foregoing VERIFIED ANSWER and know the contents thereof; the same is true to my own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters I believe it to be true. The reason this verification is made by me and not by the defendant is that the answering defendant maintains its principal place of business outside Nassau County.

The grounds of my belief as to all matters not stated upon my own knowledge are information, correspondence, conversations and a general investigation of the facts.

Dated: Mineola, New York  
December 22, 2006

  
HENRY M. PRIMAVERA